

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **JOINT SESSION SENATE AND HOUSE COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN WILLIAM CRISMORE**, on April 12, 1999  
at 9:00 A.M., in Room 104 Capitol.

#### **ROLL CALL**

##### **Senate Members Present:**

Sen. William Crismore, Chairman (R)  
Sen. Dale Mahlum, Vice Chairman (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Mack Cole (R)  
Sen. Tom Keating (R)  
Sen. Bea McCarthy (D)  
Sen. Ken Miller (R)  
Sen. Glenn Roush (D)

**Members Excused:** Sen. Lorents Grosfield (R)  
Sen. Mike Taylor (R)  
Sen. Bill Wilson (D)

##### **House Members Present:**

Rep. Bill Tash, Chairman (R)  
Rep. Cindy Younkin, Vice Chairman (R)  
Rep. Hal Harper, Vice Chairman (D)  
Rep. Carley Tuss (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Gail Gutsche (D)  
Rep. Dan McGee (R)  
Rep. Joan Hurdle (D)  
Rep. Jay Stovall (R)  
Rep. Bill Eggers (D)

**Members Excused:** Rep. Karl Ohs (R)  
Rep. David Ewer (D)  
Rep. Rod Bitney (R)  
Rep. Bob Raney (D)  
Rep. Bob Story (R)  
Rep. Doug Mood (R)  
Rep. Rick Dale (R)  
Rep. Doug Wagner (R)  
Rep. Scott Orr (R)  
Rep. Ron Erickson (D)

**Members Absent:** None.

**Staff Present:** Larry Mitchell, Legislative Branch  
Jyl Scheel, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Meeting & Date(s) Posted: Crow Tribe Water Rights  
Compact Commission  
Informational Meeting,  
4/12/1999

**SENATOR CRISMORE** called on **Chris Tweeten, Chairman of the Crow Tribe Reserved Water Rights Compact Commission.**

**Mr. Tweeten** expressed his appreciation for meeting on such short notice in order for him to brief the two committees jointly on the status of negotiations for the Crow Tribe over their water rights. Information was distributed to the Committee Members as follows:

**EXHIBIT (nas79a01)** - Outline of the Proposed Water Rights Compact  
**EXHIBIT (nas79a02)** - Proposed Water Rights Compact Agreement  
**EXHIBIT (nas79a03)** - Schedule of Meetings on the issue  
**EXHIBIT (nas79a04)** - Map of Project Area

The Compact Commission consists of nine members of which four are appointed by the legislative leadership, four by the Governor and one by the Attorney General. **SENATORS McCARTHY and SWYSGOOD** and **REPRESENTATIVES HAGENER and ROSE** are the legislative members.

In November, 1998, the Governor and Attorney General were approached by representatives of the Crow Tribe to discuss a comprehensive settlement of several contentious legal issues:

- 1) The tribes claims for reserved water rights
- 2) Coal Severance Tax
- 3) Section 2 of the Crow Allotment Act

Section 2 is a provision that limits the number of acres that non-Indians can own within the boundaries of the Crow Reservation. The legal status of large non-Indian land holdings within the boundaries of the Crow Reservation continues to be uncertain because of the issues surrounding Section 2.

One of the provisions of the compact is to protect all existing water uses such as all non-Indian uses, a large storage right in the Yellowtail Reservoir and a share of power revenues generated by their water that is stored behind Yellowtail Dam. There are a number of financial provisions included between the tribe and the United States. As part of the consideration for the entry of the water compact, the state would be required to make a cost share commitment to the settlement. The tribe agreed if an agreement could be reached on the cost share contribution by the State of Montana, in the consideration of that cost share, the tribe would release all of its remaining claims on a Coal Severance Tax litigation. The idea of being able to resolve those claims through a settlement tied together with a water rights deal made a certain amount of sense.

The tribe has a large liability claim against the United States because of the Federal Government's failure to enforce Section 2. The tribe's proposal is to try to reach an agreement with the United States that would provide them with a fund from the United States. If they can reach an agreement that provides the fund they are seeking, they will use that fund to then reacquire lands within the reservation that were conveyed away in violation of Section 2 on a willing seller, willing buyer basis.

At the November meeting they told the tribe their objective for getting this deal put together in time to submit it to the legislature for the current session was extremely ambitious and they were not confident a deal could be put together in that short period of time. It was the consensus decision of the Governor and Attorney General that this was an opportunity too good to pass up in the sense there was a chance to resolve several major issues of long standing dispute between the state and the tribe and the United States involving the Crow Reservation. Realizing time was of the essence they agreed to proceed on the issues.

He feels the general comfort level of the water using public for the proposal on the table has been increasing. There are some areas that still need work. He emphasized there have not been any water users thinking they do not want to go forward with the deal but they are concerned that the process is occurring too rapidly without adequate time to study the proposal. They are coming to understand this is a proposal that has some tangible benefits for the water users with respect to the perfection of their existing uses.

***{Tape : 1; Side : A; Approx. Time Counter : 0 - 12.6; Comments : None.}***

**Faye Bergan** was assigned to work on the issue as the **Attorney for the Compact Commission**. She gave a brief overview of the contents of the compact itself.

**{Tape : 1; Side : A; Approx. Time Counter : 12.6 - 32.3; Comments : None.}**

**Mr. Tweeten** discussed what the options are, at this point, in getting legislative consideration on this compact. They feel it would be very difficult to hold this deal together until the legislature reconvenes in two years. The tribe has made it clear they are very anxious to proceed forward with their Section 2 negotiations with the United States which is the next step in this process. They feel that cannot happen until the legislature has acted on the Compact.

They met with leadership and laid out the options as presented in **EXHIBIT (nas79a05)**. No one was comfortable with postponing action until 2001. Trying to push it through before the 90th day presents a very compressed time frame. The next option is to try to find some means of bringing the legislature back either through a special session or the option of taking up recess rather than adjourning and then coming back in a couple of months to take action. In that interim period a formal hearing could be held by the committees before calling back everyone for a quick one day session to ratify the bill. The bill is currently in draft form.

**{Tape : 1; Side : A; Approx. Time Counter : 32.3 - 46; Comments : None.}**

**Bob Kelly, Member of the Crow Tribe Negotiating Team**, stated he began this process as a member of the opposition group to the current administration and who now stand solidly with the issue. He stated the Crow Tribe has a very unique history in that they were not a warring tribe which he has made quite clear throughout negotiations. When they made the treaty, they made the treaty with friends and they were not prisoners of war taken to a reservation and put somewhere. Their leaders lead them on a different course in the early 1800's because they were wise leaders. They feel the Crow Tribe's position in history needs to be protected for that reason. Therefore, when precedents are discussed about agreements with other tribes, they request to be kept separate and feel they are entitled to that.

Copies of the Crow Tribe Resolution was distributed to the committee as per **EXHIBIT (nas79a06)**.

When discussions first began on the issue they felt it was so important that they set aside their differences, personality problems and past issue problems and united with administration to bring the issues forward in meetings with the Governor and the Attorney General. A voice vote was taken in their Tribal Council, which is the voice of the Crow Tribe, and there was not one dissenting vote. They felt that was very solid support. They want continuity in their government. They want to end the polarization that results from lawsuits and sit down and talk. They want to make good neighbors out of everybody. He realizes the burden being placed on the legislature at this late date. They have worked hard to get the compact to this point, in good faith, and they would appreciate getting the compact finalized.

**{Tape : 1; Side : B; Approx. Time Counter : 0 - 12; Comments : None.}**

**Joe Mazurek, Attorney General**, stated when this opportunity presented itself in November, the state responded whole heartedly to the tribe's proposal. He feels this is a lesson in opportunity that when opportunities arise you have to take advantage of them. This agreement provides the framework to resolve longstanding disputes over water claims, the continuing coal tax dispute and the Section 2 issues which would otherwise take years and millions of dollars in litigation and to resolve the dispute to both sides satisfaction. He encourages getting the bill introduced, allow the rules suspension and keep the process alive because this deal will not be available in two years.

**{Tape : 1; Side : B; Approx. Time Counter : 12 - 15.1; Comments : None.}**

**CONCLUSION:** Members of the committee asked questions throughout the meeting of the various presenters. All were in agreement that more time needs to be given to educate all the players on all the issues rather than hurry to reach a final decision by the 90th legislative day. They wanted adequate notice of hearing to be given so as many could participate as were interested. All were also in agreement that waiting until the next regular legislative session in 2001 was not an option.

**SENATOR CRISMORE and REPRESENTATIVE TASH** will meet with leadership today to discuss the options for proceeding with the bill. A second joint meeting will be called to inform the committees of the decision and the plans to proceed.

**{Tape : 1; Side : B; Approx. Time Counter : 15.1 - 46}**

**{Tape : 2; Side : A; Approx. Time Counter : 0 - 20}**

**ADJOURNMENT**

Adjournment: 11:00 A.M.

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SEN. WILLIAM CRISMORE, Chairman

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JYL SCHEEL, Secretary

WC/JS

**EXHIBIT (nas79aad)**